

APPENDIX A

RIGHT TO RETAINED AND ASSIGNED COUNSEL IN PROBATION VIOLATION PROCEEDINGS IN THE STATE COURTS(*)

Alabama

Retained counsel: right recognized. Source: state probation office, Birmingham (1967).

Assigned counsel: not appointed except in Mobile County. Sources: probation office, Birmingham (1967); 2 Silverstein, *Defense of the Poor* 3 (1965).

(*) Some of the information in this Appendix was collected from questionnaires sent by the National Legal Aid and Defender Association to defender members and probation offices in July, 1967. The responses are indicated in the Appendix by naming the office and its location.

References to Sklar, e.g., under Arizona, are to a master's thesis, *Revocation of Parole and Adult Probation* (1962), available by interlibrary loan from Northwestern University School of Law, 357 E. Chicago Ave., Chicago, Ill. 60611. He obtained his information from the state probation and parole offices, or, in some instances, the probation office in the most populous county.

References to the American Bar Foundation field reports are to the original data gathered by official reporters in each state in a total of 300 sample counties. Research procedure is described in 1 Silverstein, *Defense of the Poor* 171-81 (1965); the sample counties are listed at pp. 155-69. Data in this Appendix are from Form I, question 8d, as reprinted at p. 191. Further information about the survey can be obtained from the American Bar Foundation, 1155 E. 60th St., Chicago, Ill. 60637.

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Alaska

Retained counsel: right recognized. Source: Statutes § 12.55.110.

Assigned counsel: right recognized. Source: *State v. Hoffman*, 404 P.2d 644 (1967).

Arizona

Retained counsel: right recognized. Sources: *State v. Maxwell*, 97 Ariz. 162, 398 P.2d 548 (1965) (facts illustrate use of retained counsel); Sklar, p. 161 (1962) (Maricopa County [Phoenix]).

Assigned counsel: right not recognized. Source: American Bar Foundation field reports (1963).

Arkansas

Retained counsel: right recognized. Sources: *Gerard v. State*, 235 Ark. 1015, 363 S.W.2d 916 (1963) (facts illustrate use of retained counsel); Sklar, p. 161 (1962).

Assigned counsel: appointed in some counties but not in others. Sources: American Bar Foundation field reports (1963); Sklar, p. 161 (1962).

California

Retained counsel: right depends on whether judge holds a hearing; practice varies with different judges and different counties. Source: various public defenders and probation offices in the state (1967).

Assigned counsel: right apparently recognized in some courts and not others; practice varies with different judges

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and different counties. See *In Re Davis*, 37 Cal. 2d 872, 236 P.2d 579 (1951). Source: various public defenders and probation offices in the state (1967).

Colorado

Retained counsel: right recognized, at least in some counties. Source: public defender, Brighton (1967).

Assigned counsel: recognition of right varies according to practice of different judges and in different counties. Source: American Bar Foundation field reports (1963).

Connecticut

Retained counsel: right recognized. Sources: probation office, Hartford; various public defenders (1967).

Assigned counsel: right recognized. Sources: probation office, Hartford, and various public defenders (1967); American Bar Foundation field reports (1963).

Delaware

Retained counsel: right recognized. Source: Sklar, p. 167 (1962) (New Castle County [Wilmington]).

Assigned counsel: right recognized, at least in some cases. Sources: Report of Public Defender (1966); Sklar, p. 157 (1962).

District of Columbia

Retained counsel: right recognized. Source: Legal Aid Agency, Washington (1967).

Assigned counsel: right recognized, but counsel not always appointed. Source: Legal Aid Agency (1967).

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Florida

Retained counsel: right recognized. Source: Stats. Ann. § 948.06.

Assigned counsel: right not recognized except in a few counties. Sources: *Thomas v. State*, 163 So.2d 328 (Ct. App. 3d Dist. 1964); *Phillips v. State*, 165 So.2d 246 (Ct. App. 2d Dist. 1964); various public defenders (1967); American Bar Foundation field reports (1963).

Georgia

Retained counsel: right recognized. Source: Code § 27-2713.

Assigned counsel: appointed in some counties, but not in others; in Atlanta (Fulton County) counsel is appointed on request. Sources: probation offices, Atlanta and Savannah (1967); Legal Aid and Defender Society, Athens (1967); American Bar Foundation field reports (1963).

Hawaii

Retained counsel: right recognized. Source: probation office, Honolulu (1967).

Assigned counsel: right recognized. Sources: Rev. Laws § 253-5, as amended in 1967 by Act 179; American Bar Foundation field report showed appointments being made in 1964.

Idaho

Retained counsel: right apparently denied, although in practice retained counsel may be permitted. Source: *Frank*.

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lin v. State, 87 Idaho 291, 392 P.2d 552 (1964). Cf. *State v. Edelblute*, 424 P.2d 739 (1967) (facts illustrate use of retained counsel).

Assigned counsel: right not recognized. Source: *Franklin v. State*, supra.

Illinois

Retained counsel: right recognized. Source: *People v. Price*, 24 Ill. App. 2d 364, 377, 164 N.E.2d 528, 534 (1960).

Assigned counsel: right recognized. Sources: *People v. Price*, supra; various public defenders in the state (1967); American Bar Foundation field reports (1963).

Indiana

Retained counsel: right recognized. Source: Rev. Stats. (Burns § 9-2211, as amended 1967, ch. 204 of Acts).

Assigned counsel: recognition of right varies with different judges and in different counties. Sources: public defenders in two counties (1967); 2 Silverstein, *Defense of the Poor* 218-19 (1965).

Iowa

Retained counsel: recognition of right apparently varies depending on whether judge holds a hearing. Source: see *Curtis v. Bennett*, 256 Iowa 1164, 131 N.W.2d 1 (1964), cert. denied, 380 U.S. 958 (1965).

Assigned counsel: practice varies in different counties, but right is generally not recognized. Source: American Bar Foundation field reports (1963).

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Kansas

Retained counsel: right is probably recognized. Source: see *State v. Nelson*, 196 Kan. 592, 412 P.2d 1018 (1966).

Assigned counsel: practice varies in different counties as to appointment. Source: American Bar Foundation field reports (1963).

Kentucky

Retained counsel; right recognized. Sources: Sklar, p. 168 (1962); see *Wright v. Commonwealth*, 391 S.W.2d 685 (1965).

Assigned counsel: right recognized in Louisville (Jefferson County) but not in other counties. Sources: Jefferson Circuit Clerk (1967); American Bar Foundation field reports (1963).

Louisiana

Retained counsel: right recognized. Source: Sklar, p. 182 (1962).

Assigned counsel: not appointed except sometimes in New Orleans (Orleans Parish) and on request in other parishes. Sources: American Bar Foundation field reports (1964); Sklar, p. 182 (1962).

Maine

Retained counsel: right recognized. Source: Sklar, p. 174 (1962) (Cumberland County [Portland]). Rev. Stats., ch. 27-A, § 8 requires a hearing.

Assigned counsel: right not recognized. Source: American Bar Foundation field reports (1963).

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Maryland

Retained counsel: right recognized. Source: *Edwardsen v. State*, 220 Md. 82, 151 A.2d 132, 136 (1959).

Assigned counsel: right denied; but counsel are usually assigned in Baltimore City. Sources: *Edwardsen v. State*, supra; Baltimore City probation office (1967).

Massachusetts

Retained counsel: right recognized. Source: may be inferred from *Williams v. Commonwealth*, 350 Mass. 732, 216 N.E.2d 779 (1966).

Assigned counsel: right recognized. Source: Supreme Judicial Court Rule 10, as construed in *Williams v. Commonwealth*, supra.

Michigan

Retained counsel: right recognized. Sources: *Re McLeod*, 348 Mich. 434, 83 N.W.2d 340 (1957) (facts illustrate use of retained counsel); *People v. Wood*, 2 Mich. App. 342, 139 N.W.2d 895 (1966).

Assigned counsel: right denied. Source: *People v. Wood*, supra.

Minnesota

Retained counsel: right recognized. Source: Stats. § 609.14, subd. 2.

Assigned counsel: right recognized. Source: Stats. § 611.14, subd. (c).

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Mississippi

Retained counsel: right recognized. Source: Sklar, p. 168 (1962). Code Ann. § 4004-25 requires that defendant be brought before the court, which implies a right of hearing.

Assigned counsel: right not recognized, except in Pascagoula (Jackson County) and possibly a few other counties. Sources: public defender, Pascagoula (1967); American Bar Foundation field reports (1963); Sklar, p. 168 (1962).

Missouri

Retained counsel: right not recognized, since there is no right to a hearing. Source: *State v. Small*, 382 S.W. 2d 379 (1965).

Assigned counsel: right not recognized. Source: *State v. Small*, supra.

Montana

Retained counsel: right uncertain. Rev. Code § 94-9831 provides that hearing may be informal or summary.

Assigned counsel: right not recognized. Sources: Elison, "Assigned Counsel in Montana," 26 *Mont. L. Rev.* 1, 17-18 (1964); American Bar Foundation field reports (1963).

Nebraska

Retained counsel: right probably recognized. *Phoenix v. State*, 162 Neb. 669, 77 N.W.2d 237 (1956) requires a fair hearing.

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Assigned counsel: appointed in some counties but not in others. Source: American Bar Foundation field reports (1963).

Nevada

Retained counsel: right recognized. Sources: Sklar, p. 169 (1963); Las Vegas public defender (1967).

Assigned counsel: right denied. Source: *Shum v. Fogliani*, 413 P.2d 495 (1966). But Las Vegas public defender reports that he appears at hearings on violations.

New Hampshire

Retained counsel: right recognized. Source: Sklar, p. 183. Rev. Stats. Ann. §504:4 provides for summary hearing.

Assigned counsel: right not recognized, unless requested. Source: American Bar Foundation field reports (1963); Sklar, p. 183 (1962) (unqualified "no").

New Jersey

Retained counsel: right recognized. Source: *State v. Moretti*, 50 N.J. Super. 223, 141 A.2d 810 (1958) (facts illustrate use of retained counsel).

Assigned counsel: appointed in some counties but not in others, or only on request. Source: American Bar Foundation field reports (1963).

New Mexico

Retained counsel: right recognized. Sources: Sklar, p. 163 (1962) (1st Dist.); *Blea v. Cox*, 75 N.M. 265, 403 P.2d 201 (1965).

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Assigned counsel: right recognized. Source: *Blea v. Cox*, supra.

New York

Retained counsel: right recognized in some parts of the state, including New York City and 4th Appellate Department. Sources: various defender, legal aid, and probation offices in the state (1967); Sklar, p. 175 (1962). Code Crim. Pro. § 935 requires a hearing.

Assigned counsel: right recognized by decision in 4th Appellate Department and practice in New York City and some other counties. Old decision in 3d Department is contra. Sources: various defender, legal aid, and probation offices (1967); *People v. Hamilton*, 26 A.D. 2d 134, 271 N.Y.S. 2d 694 (4th Dept. 1966); *People v. St. Louis*, 3 A.D. 2d 883, 161 N.Y.S. 2d 170 (3d Dept. 1957); American Bar Foundation field reports (1963); Note, 59 Colum. L. Rev. 311, 329 (1959).

North Carolina

Retained counsel: right recognized. Source: Sklar, p. 176 (1962). See *State v. Haddock*, 241 N.C. 182, 82 S.E.2d 548 (1954) (hearing required).

Assigned counsel: appointed in some counties, but not in others. Source: American Bar Foundation field reports (1963).

North Dakota

Retained counsel: right probably recognized. Source: American Bar Foundation field reports (1963).

Assigned counsel: right recognized. Source: American Bar Foundation field reports (1963).

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Ohio

Retained counsel: right recognized. Source: *Thomas v. Maxwell*, 175 Ohio St. 233, 193 N.E.2d 150, 152 (1963).

Assigned counsel: right denied. Source: *Thomas v. Maxwell*, supra. However, Toledo Legal Aid Society reports being appointed in some cases.

Oklahoma

Retained counsel: right recognized. Sources: probation office, Tulsa (1967); Sklar, p. 158 (1962) (Tulsa and Oklahoma Counties).

Assigned counsel: appointed in some counties but not in others. Source: American Bar Foundation field reports (1963). Cf. *Ex Parte Boyd*, 73 Okla. Crim. 441, 122 P.2d 162 (1942), syllabus point 6 (not discussed in opinion).

Oregon

Retained counsel: right recognized. Source: *Gebhart v. Gladden*, 243 Ore. 145, 412 P.2d 29 (1966); *Perry v. Williard*, 427 P.2d 1020 (1967).

Assigned counsel: right recognized. *Gebhart v. Gladden*, *Perry v. Williard*, supra.

Pennsylvania

Retained counsel: right recognized only if the practice of the local judge is to hold a hearing. Hearings are held in Philadelphia and other populous counties. Stats. Ann., tit. 19, § 1084 does not require a hearing. Source: defender offices in several counties of the state (1967).

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Assigned counsel: right recognized if a hearing is held. Source: *Com. ex rel. Remeriez v. Maroney*, 415 Pa. 534, 204 A.2d 450 (1964).

Rhode Island

Retained counsel: right recognized. Sources: *Harris v. Langlois*, 202 A.2d 288 (1964), cert. denied, 379 U.S. 866 (1965) (facts illustrate use of retained counsel); Sklar, p. 169 (1962).

Assigned counsel: right recognized. Source: 3 Silverstein, *Defense of the Poor* 657 (1965).

South Carolina

Retained counsel: right recognized. Source: *State v. Clough*, 220 S.C. 390, 68 S.E.2d 329 (1951) (facts illustrate use of retained counsel; fair hearing required).

Assigned counsel: right not recognized. Source: American Bar Foundation field reports (1963).

South Dakota

Retained counsel: right uncertain. Sources: Sklar, p. 164 says "no" (1962); cf. *Application of Jerrel*, 77 S.D. 487, 93 N.W.2d 614 (1958) (fair hearing required).

Assigned counsel: appointed in some counties but not in others. Source: American Bar Foundation field reports (1963).

Tennessee

Retained counsel: right recognized. Source: Code § 40-2907.

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Assigned counsel: right not recognized. Source: American Bar Foundation field reports (1963).

Texas

Retained counsel: right recognized. Sources: Code of Crim. Pro. art. 42.12, § 3b; probation office, Dallas (1967); defender offices, Houston, Edinburg (1967).

Assigned counsel: right recognized. Source: Code of Crim. Pro. art. 42.12, § 3b, at least when probation is recommended by a jury and probably in all cases.

Utah

Retained counsel: right recognized. Source: defender office, Salt Lake City (1967).

Assigned counsel: appointed by some judges but not others. Source: Mazor, "The Right to be Provided Counsel," 9 *Utah L. Rev.* 50, 74 (1964).

Vermont

Retained counsel: right recognized. Source: Sklar, p. 184 (1962). Stats. Ann., tit. 28, § 1015 provides that judge "may inquire summarily."

Assigned counsel: right not recognized. Source: American Bar Foundation field reports (1964); Sklar, p. 184 (1962).

Virginia

Retained counsel: right probably recognized. Source: *Griffin v. Cunningham*, 205 Va. 349, 136 S.E.2d 840 (1964) (fair hearing required).

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Assigned counsel: appointed in some cities and counties, but not in others. Source: American Bar Foundation field reports (1963).

West Virginia

Retained counsel: right uncertain. Code § 62-12-10 provides for summary hearing. Local practice apparently permits counsel in at least some counties. Source: Sklar, pp. 1, 184 (1962) (Kanawha County [Charleston]).

Assigned counsel: appointed in some counties, but not in others. Source: American Bar Foundation field reports (1963).

Wisconsin

Retained counsel: right recognized. Source: *Smith v. State*, 33 Wis.2d 695, 148 N.W.2d 39 (1967).

Assigned counsel: right recognized. Source: *Smith v. State*, supra.

Wyoming

Retained counsel: right recognized. Source: Defender Aid Program, University of Wyoming (1967).

Assigned counsel: right not recognized. Sources: Defender Aid Program, University of Wyoming (1967); American Bar Foundation field reports (1963).

APPENDIX B

PROBATION AND REVOCATION IN SELECTED CITIES(*)

City	New Probation Cases		Revocations	
	1965	1966	1965	1966
Atlanta	1,245	1,292	240	334
Baltimore	972	764	153	173
Boulder, Colo.	96	116	9	16
Cleveland	733	699	135	88
Columbus	239	—	79	—
Crown Pt., Ind.	663	572	33	21
Dallas	957	1,220	135	119
Denver, Colo.	133	133	8	6
Edinburg, Texas	28	54	6	4
Gainesville, Fla.	93	73	2	2
Hartford	2,153	2,120	646	320
Houston, Texas	679	729	121	111
Honolulu	249	231	24	33
Joliet, Ill.	25	30	3	4
Kansas City, Kan.	57	44	2	1
Kansas City, Mo.	15	4	4	13
Los Angeles	5,862	5,653	2,607	4,027
Martinez, Cal.	292	339	74	58
Mayville, N. Y.	120	101	10	13

(*) Source: Information from local probation offices sent to National Legal Aid and Defender Association in 1967. The city usually includes cases for the surrounding county.

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City	New Probation Cases		Revocations	
	1965	1966	1965	1966
Mineola, N. Y.	755	693	27	18
New London	36	46	25	9
New Haven	101	106	8	11
Oakland	878	762	256	268
Philadelphia	3,691	4,233	350	249
Sacramento	309	310	129	123
St. Louis City	1,404	693	85	139
St. Louis County	199	216	58	64
St. Paul	92	74	12	21
San Diego	880	1,041	262	248
Santa Ana, Cal.	523	540	214	196
Santa Clara, Cal.	419	450	81	123
Savannah	68	87	4	6
Seranton	58	37	50	—
Syracuse	14	18	2	3
Tulsa	65	40	22	33
Utica, N. Y.	84	52	8	1
Visalia, Cal.	163	145	27	19
Williamsport, Pa.	20	40	2	3
Total	24,364	23,747	5,913	6,877